

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/15/03

Referred: Finance

Sponsor(s): SENATORS GREEN, Taylor, Dyson, Ben Stevens, Ogan, Cowdery, Seekins, Wagoner, Wilken

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to medical care and crimes relating to medical care, including medical
2 care and crimes relating to the medical assistance program, catastrophic illness
3 assistance, and medical assistance for chronic and acute medical conditions."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 17.30.080(b) is amended to read:

6 (b) A person who violates (a) of this section, or who otherwise manufactures,
7 distributes, dispenses, or conducts research with a controlled substance in the state
8 without fully complying with 21 U.S.C. 811 - 830 (Controlled Substances Act), and
9 regulations adopted under those sections, is guilty of misconduct involving a
10 controlled substance under AS 11.71.010 - 11.71.070 in the degree appropriate to the
11 circumstances as described in those sections. **Upon filing a complaint, information,**
12 **presentment, or indictment charging a medical assistance provider with**
13 **misconduct involving a controlled substance under AS 11.71.140 - 11.71.190, the**
14 **attorney general shall, in writing, notify the commissioner of health and social**

1 **services of the filing.**

2 * **Sec. 2.** AS 17.30.080 is amended by adding new subsections to read:

3 (c) Upon receiving a notice from the attorney general under (b) of this section,
4 the commissioner of health and social services shall immediately undertake a review
5 of all unpaid claims or requests for reimbursements attributable to services claimed to
6 have been provided by the person charged.

7 (d) In this section,

8 (1) "claims" has the meaning given in AS 47.05.290;

9 (2) "medical assistance provider" has the meaning given in
10 AS 47.05.290;

11 (3) "medical purpose" means a purpose that is solely medical as
12 opposed to any other purpose, that is reasonably necessary for treatment of a person's
13 illness, injury, or physical or mental health, and that is provided by a practitioner while
14 acting within the usual course of professional practice or research and in accordance
15 with a standard of care generally recognized and accepted within the medical
16 profession in the United States;

17 (4) "practitioner" has the meaning given in AS 11.71.900.

18 * **Sec. 3.** AS 47.05 is amended by adding new sections to read:

19 **Article 2. Medical Care Programs.**

20 **Sec. 47.05.200. Annual audits.** (a) The department shall annually contract
21 for independent audits of a statewide sample of all medical assistance providers in
22 order to identify overpayments and violations of criminal statutes. The audits
23 conducted under this section may not be conducted by the department or employees of
24 the department. The number of audits under this section each year, as a total for the
25 medical assistance programs under AS 47.07 and AS 47.08, shall be 0.75 percent of
26 all enrolled providers under the programs, adjusted annually on July 1, as determined
27 by the department, except that the number of audits under this section may not be less
28 than 75. The audits under this section must include both on-site audits and desk audits
29 and must be of a variety of provider types. The department may not award a contract
30 under this subsection to an organization that does not retain persons with a significant
31 level of expertise and recent professional practice in the general areas of standard

1 accounting principles and financial auditing and in the specific areas of medical
 2 records review, investigative research, and Alaska health care criminal law. The
 3 contractor, in consultation with the commissioner, shall select the providers to be
 4 audited and decide the ratio of desk audits and on-site audits to the total number
 5 selected.

6 (b) Within 90 days after receiving each audit report from an audit conducted
 7 under this section, the department shall begin administrative procedures to recoup
 8 overpayments identified in the audits and shall allocate the reasonable and necessary
 9 financial and human resources to ensure prompt recovery of overpayments unless the
 10 attorney general has advised the commissioner in writing that a criminal investigation
 11 of an audited provider has been or is about to be undertaken, in which case, the
 12 commissioner shall hold the administrative procedure in abeyance until a final
 13 charging decision by the attorney general has been made. The commissioner shall
 14 provide copies of all audit reports to the attorney general so that the reports can be
 15 screened for the purpose of bringing criminal charges.

16 (c) Each fiscal year, the state's share of recovered overpayments obtained
 17 because of the required contract audits under this section shall be deposited with the
 18 commissioner of revenue under AS 37.10.050 and separately accounted for by the
 19 commissioner of administration under AS 37.05.142. The legislature may appropriate
 20 a portion of the estimated balance in the account to the department to pay for the
 21 annual audits described in this section.

22 (d) As a condition of obtaining payment under AS 47.07 and AS 47.08 and for
 23 purposes of this section, a provider shall allow

24 (1) the department reasonable access to the records of medical
 25 assistance recipients and providers; and

26 (2) audit and inspection of the records by state and federal agencies.

27 (e) This section does not preclude the department from performing audits that
 28 are allowed or required under other laws.

29 **Sec. 47.05.210. Medical assistance fraud.** (a) A person commits the crime
 30 of medical assistance fraud if the person

31 (1) knowingly submits or authorizes the submission of a claim to a

1 medical assistance agency for property, services, or a benefit with reckless disregard
2 that the claimant is not entitled to the property, services, or benefit;

3 (2) knowingly prepares or assists another person to prepare a claim for
4 submission to a medical assistance agency for property, services, or a benefit with
5 reckless disregard that the claimant is not entitled to the property, services, or benefit;

6 (3) except as otherwise authorized under the medical assistance
7 program, confers, offers to confer, solicits, agrees to accept, or accepts property,
8 services, or a benefit

9 (A) to refer a medical assistance recipient to a health care
10 provider; or

11 (B) for providing health care to a medical assistance recipient if
12 the property, services, or benefit is in addition to payment by a medical
13 assistance agency;

14 (4) does not produce medical assistance records to a person authorized
15 to request the records;

16 (5) knowingly makes a false entry in or falsely alters a medical
17 assistance record;

18 (6) knowingly destroys, mutilates, suppresses, conceals, removes, or
19 otherwise impairs the verity, legibility, or availability of a medical assistance record;
20 or

21 (7) violates a provision of AS 47.07 or AS 47.08 or a regulation
22 adopted under AS 47.07 or AS 47.08.

23 (b) Medical assistance fraud under (a)(1), (2), or (3) of this section is

24 (1) a class B felony if the portion of the claim or claims submitted in
25 violation of (a)(1) or (2) of this section, or the value of the property, services, or
26 benefit that is in violation of (a)(3) of this section, is \$25,000 or more;

27 (2) a class C felony if the portion of the claim or claims submitted in
28 violation of (a)(1) or (2) of this section, or the value of the property, services, or
29 benefit that is in violation of (a)(3) of this section, is \$500 or more but less than
30 \$25,000;

31 (3) a class A misdemeanor if the portion of the claim or claims

1 submitted in violation of (a)(1) or (2) of this section, or the value of the property,
2 services, or benefit that is in violation of (a)(3) of this section, is less than \$500.

3 (c) Medical assistance fraud under (a)(4), (5), or (6) of this section is a class A
4 misdemeanor.

5 (d) Medical assistance fraud under (a)(7) of this section is a class B
6 misdemeanor.

7 **Sec. 47.05.220. Notice of charges.** Upon the filing of a complaint,
8 information, presentment, or indictment charging a medical assistance provider with a
9 crime under AS 47.05.210, the attorney general shall, in writing, notify the
10 commissioner of the filing. Upon receiving notice from the attorney general under
11 this section, the commissioner shall immediately undertake a review of all unpaid
12 claims or requests for reimbursements attributable to services claimed to have been
13 provided by the person charged.

14 **Sec. 47.05.230. Determination of value; aggregation of amounts.** In
15 AS 47.05.210, whenever it is necessary to determine the value of property, that value
16 shall be determined in accordance with AS 11.46.980. In determining the degree or
17 classification of a crime described under AS 47.05.210, amounts involved in criminal
18 acts committed under one course of conduct, whether from the same person or several
19 persons, shall be aggregated.

20 **Sec. 47.05.240. Exclusion from medical assistance programs.** (a) The
21 commissioner may exclude an applicant to or disenroll a medical assistance provider
22 in the medical assistance program in AS 47.07 or AS 47.08, or both, for a period of up
23 to 10 years after unconditional discharge on a conviction

24 (1) for medical assistance fraud under AS 47.05.210 or misconduct
25 involving a controlled substance under AS 11.71; or

26 (2) in a court of the United States or a court of another state or
27 territory, for a crime with elements similar to the crimes included under (1) of this
28 subsection.

29 (b) After a period of exclusion under (a) of this section, an applicant may not
30 participate in a medical assistance program under AS 47.07 or AS 47.08 until the
31 applicant establishes to the commissioner by clear and convincing evidence that the

1 applicant possesses all required licenses and certificates and is qualified to participate.

2 **Sec. 47.05.290. Definitions.** In AS 47.05.200 - 47.05.290,

3 (1) "benefit" has the meaning given in AS 11.81.900;

4 (2) "claim," in addition to its usual meaning, also means a request for
5 payment for medical assistance services attempted to be provided, provided, or
6 claimed to have been provided to another, whether the request is in an electronic
7 format or paper format or both, made or submitted by a person or an organization that
8 is or claims to be a medical assistance provider;

9 (3) "commissioner" means the commissioner of health and social
10 services;

11 (4) "department" means the Department of Health and Social Services;

12 (5) "falsely alters" has the meaning given in AS 11.46.580;

13 (6) "knowingly" has the meaning given in AS 11.81.900;

14 (7) "makes a false entry" has the meaning given in AS 11.56.820;

15 (8) "medical assistance agency" means the department, an agency of
16 the department, and an agent, contractor, or designee of the department or of one of its
17 agencies that performs one or more of the activities of the department or an agency of
18 the department;

19 (9) "medical assistance program" means a program under AS 47.07 or
20 AS 47.08;

21 (10) "medical assistance provider" or "provider" means a person or
22 organization that provides, attempts to provide, or claims to have provided services or
23 products to a medical assistance recipient that may qualify for reimbursement under
24 AS 47.07 or AS 47.08 or a person or organization that participates in or has applied to
25 participate in a medical assistance program as a supplier of a service or product;

26 (11) "medical assistance recipient" means a person on whose behalf
27 another claims or receives a payment from a medical assistance agency, without
28 regard to whether the individual was eligible for benefits under a medical assistance
29 program;

30 (12) "medical assistance record" means records required to be kept by
31 state or federal law or regulation regarding claims to a medical assistance agency;

1 (13) "organization" has the meaning given in AS 11.81.900;

2 (14) "person" has the meaning given in AS 11.81.900;

3 (15) "property" has the meaning given in AS 11.81.900;

4 (16) "reckless disregard" means acting recklessly, as that term is
5 defined in AS 11.81.900;

6 (17) "services" means a health care benefit available to a medical
7 assistance recipient, including health care benefits provided, attempted to be provided,
8 or claimed to have been provided to another, by a medical assistance provider, or
9 "services" as defined in AS 11.81.900;

10 (18) "unconditional discharge" has the meaning given in
11 AS 12.55.185.

12 * **Sec. 4.** AS 47.07.010 is amended to read:

13 **Sec. 47.07.010. Purpose.** It is declared by the legislature as a matter of
14 public concern that the needy persons of this state who are eligible for medical care
15 at public expense under this chapter should seek only [RECEIVE] uniform and
16 high quality [MEDICAL] care that is appropriate to their condition and cost-
17 effective to the state and receive that care, regardless of race, age, national origin, or
18 economic standing. It is equally a matter of public concern that providers of
19 services under this chapter should operate honestly, responsibly, and in
20 accordance with applicable laws and regulations in order to maintain the
21 integrity and fiscal viability of the state's medical assistance program, and that
22 those who do not operate in this manner should be held accountable for their
23 conduct. It is vital that the department administer this chapter in a manner that
24 promotes effective, long-term cost containment of the state's medical assistance
25 expenditures while providing medical care to recipients. Accordingly, this chapter
26 authorizes the department [DEPARTMENT OF HEALTH AND SOCIAL
27 SERVICES] to apply for participation in the national medical assistance program as
28 provided for under 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act).

29 * **Sec. 5.** AS 47.07.074(a) is amended to read:

30 (a) As a condition of obtaining payment under AS 47.07.070, a health facility
31 shall allow

- 1 (1) the department and the commission reasonable access to the
2 [FINANCIAL] records of medical assistance **recipients and providers**
3 [BENEFICIARIES]; and
4 (2) audit and inspection of **the** [FINANCIAL] records by state and
5 federal agencies.